

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WENNEKER DISTILLERIES,	)	
	)	
Plaintiff,	)	No. 1:11-CV-1010
	)	(HON. YVETTE KANE)
vs.	)	
	)	
OLIFANT USA INC., and	)	
DRINKS AMERICA, Inc.	)	
	)	
Defendants.	)	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO AMEND  
COMPLAINT**

**I. Procedural History/Statement of Facts**

On May 25, 2011, Plaintiff filed the Complaint in the present matter. On June 7, 2011, Defendant, Drinks America, Inc., was served with the Complaint, and an Answer to the Complaint was due on June 28, 2011. On June 27, 2011, Plaintiff's counsel was contacted by Gary Schafkopf who indicated that he would be representing Defendant, Drinks America, Inc. in this matter. Mr. Schafkopf asked for an extension of time to respond to the Complaint. Plaintiff's counsel agreed to this extension. Subsequently, on August 1, 2011, Plaintiff's counsel was contacted by Matthew B. Weisberg who indicated that he would be entering his appearance on behalf of Defendant, Drinks America, Inc., and asked for an additional extension of time. Mr. Weisberg also indicated that he would be moving for the pro hac vice admission of Mr. Schafkopf. Plaintiff's counsel granted another extension and offered no opposition to the admission of Mr. Schafkopf.

On August 15, 2011, Plaintiff's counsel received a copy of Defendant, Drinks America, Inc.'s, Motion to Dismiss. On September 2, 2011, Plaintiff's counsel indicated to counsel for Defendant, Drinks America, Inc., that Plaintiff did not concur with Defendant's Motion to

Dismiss. At that time, Plaintiff's counsel requested an extension of time to file Plaintiff's opposition to said motion. This request was denied.

Plaintiff now seeks leave to file an Amended Complaint to address the alleged deficiencies in Plaintiff's Complaint that are set forth in Defendant's Motion to Dismiss, a true and correct copy of the proposed Amended Complaint is attached hereto, marked Exhibit "A," and made a part hereof.

## **II. Issues Presented**

Whether Plaintiff should be granted leave to file an Amended Complaint when an Amended Complaint will cure the alleged issues set forth in Defendant's Motion to Dismiss and there is no prejudice to the Defendant in allowing such an amendment?

**YES.** Federal Rule of Civil Procedure 15 provides that the court should freely give leave to amend when justice requires.

## **III. Argument**

The court should freely give leave to file an amended pleading when justice so requires. Fed.R.C.P. 15(a)(1)(B). In the present case, the Plaintiff seeks to amend its Complaint to include a cause of action for breach of a third party beneficiary contract. Allowing an amended Complaint will not impose any burden or unnecessary delay on the Defendants. Refusing Plaintiff's request will unfairly prejudice Plaintiff because Plaintiff will not be afforded the ability to seek all of its legal remedies against Defendant, Drinks America, inc.

#### **IV. Conclusion**

For all of the forgoing reasons, this Honorable Court should enter an Order granting Plaintiff's motion and permitting Plaintiff leave of court to file an Amended Complaint.

**BERNSTEIN LAW FIRM, P.C.**

/s/ Shawn P. McClure  
Shawn P. McClure, Esquire  
Attorney for Plaintiffs

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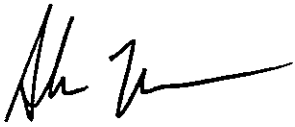
WENNEKER DISTILLERIES,	)	
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vs.	)	
	)	
OLIFANT USA INC., and	)	
DRINKS AMERICA, Inc.	)	
	)	
Defendants.	)	

**CERTIFICATE OF SERVICE**

I, Shawn P. McClure, Esquire, hereby certify that a true and correct copy of the foregoing Plaintiff's Motion to File Amended Complaint was served via ECF and regular mail upon the following parties:

Prochaiak Weisberg, P.C.  
Attn: Matthew B. Weisberg  
7 S. Morton Avenue  
Morton, PA 19070  
Phone: (610) 690-0801  
Facsimile: (610) 690-0880  
Email: [mweisberg@ppwlaw.com](mailto:mweisberg@ppwlaw.com)

Olifant USA, Inc.  
c/o Paul Walraven  
670 Town Hill Road  
New Hartford, CT 06057

  
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Shawn P. McClure